

Lal Bahadur Shriramdatta Chaudhari

Vs

State of Maharashtra

Criminal Appeal No. 438 of 1979

(S. R. Pandian, Smt. M. S. Fathima Beevi JJ)

09.10.1990

JUDGMENT

M. FATHIMA BEEVI, J. –

1. The appeal by special leave is directed against the judgment and order dated July 25, 1979 in Criminal Revision Application No. 57 of 1979 of the High Court of Bombay upholding the conviction of the appellant under Section 409, IPC, but reducing the sentence of one year RI to three months RI and a fine of Rs. 1000 and in default of payment of fine further imprisonment for a period of three months.

2. The appellant was serving as Quality Inspector of the Food Corporation of India in charge of the Corporation's Depot at Jalgaon. His duty was to make purchases of Udid, get them milled and then despatch them to military centres as per directions. This Udid was stored in the Corporation's godown. The appellant was to maintain accounts and was responsible for the entire stock. In the godown, one clerk and two watchmen worked under the appellant. Prabhat Dal Mill had taken a milling contract from the Corporation but that contract had come to an end on June 13, 1975. Shamuvel Kharat was the watchman on duty on August 12, 1975. The prosecution case is that the appellant on August 12, 1975 surreptitiously and unauthorisedly sold ten bags of Udid to Prabhat Dal Mill and misappropriated the proceeds. These bags were transported in a truck and Shamuvel Kharat saw the removal and delivery of the ten bags. He also detected 10 bags missing from one row in the godown. He gave a telegram to the head office at Indore and on the next day lodged the complaint at the police station. It is also the case of the prosecution that the appellant had similarly sold ten bags of Udid on June 30, 1975 to S.K. Dal Mill. After investigation, a case was registered and charge-sheeted against the appellant and accused 2, 3 and 4, who were the owners of the two Mills. The trial court acquitted accused 2, 3 and 4 but convicted the appellant. The conviction was confirmed by the Sessions Judge in appeal. The revision petition filed against the judgment of the Sessions Judge was dismissed by the High Court.

3. In the course of the investigation, the police seized 10 bags of Udid with the stamp of FCI printed on them from Prabhat Dal Mill. The stock register of the Mill was also seized. PW 10, the Assistant Manager of FCI, conducted the physical verification of the stock in August 1975 and as per the verification report Ex. 67, there was a shortage of 21 quintal and 40 kilograms of dal. The trial court recorded the conviction against the appellant mainly accepting the evidence of the watchman Shamuvel Kharat, the recovery from the Prabhat Dal Mill, the shortage detected and other materials on record. The learned Sessions Judge carefully scrutinised the entire evidence and has also come to the conclusion that the case against the appellant has been established. The High Court did not find any infirmity in the appreciation of the evidence or the application of the legal principles to justify

any interference. In disposing of the revision petition, the High Court has also considered the various contentions advanced on behalf of the appellant and referred to the material evidence for the purpose of disposing the same.

4. The learned counsel for the appellant urged before us that the findings though concurrent suffer from serious error. It is said that material facts have been overlooked, the findings are thus vitiated and have resulted in grave injustice. According to the learned counsel, there is clear admission of shortage occurring due to storage and if proper allowance is given for such shortage, the appellant could not be held liable. It is also pointed out that the watchman was motivated in falsely implicating the appellant and that undue weight has been given to his evidence which in the circumstances of the case is biased and could not have been accepted. It was also submitted that there is discrepancy in the evidence which throws considerable doubt about the veracity of the statements made, that the case has not been proved beyond reasonable doubt and the judgment and conviction cannot, therefore, be sustained. The respondent's counsel maintained that there is overwhelming evidence against the appellant and there is no sustainable ground to take a contrary view and disturb the concurrent findings of the three courts.

5. We have considered these submissions. In our view, the conviction is proper and legal and there is no valid ground to interfere with the same. The fact that the appellant was in charge of the store and bound to maintain the accounts is nowhere disputed. As rightly pointed out by the High Court, this is one of the rare cases where the prosecution has proceeded on the basis of direct evidence. The case is not based on the verification of stock and accounts alone. A physical removal of 10 bags of Udid at the instance of the appellant from the godown on August 12, 1975 was alleged and sought to be proved by the prosecution. The evidence relating to such removal consists of the testimony of the watchman, the truck driver and mazdoor and also the recovery of the material from the Mill. This evidence has been accepted by all the courts. The circumstance that there was shortage on verification of the stock is relied on only as a corroborative piece of evidence. The testimony of the Assistant Manager who effected the physical verification is that within a short period of one month a shortage of 21 quintals had been found. The witness does admit that there could be shortage on account of storage due to various causes. But it is nowhere admitted that within such a short period of one month there could be shortage of 21 quintals. Therefore, the argument of the learned counsel that whatever shortage found was to be accounted for as due to causes specified by the Assistant Manager has been rightly rejected by the High Court. The various grounds taken by the appellant for discrediting the testimony of the prosecution witnesses had been found to be baseless. We also find that the High Court has considered all aspects of the case and there is no infirmity in the evidence of the watchman, driver and the truck owner. The documents produced clearly established the case against the appellant beyond any shadow of doubt. The cumulative effect of the circumstances proved lead only to the conclusion that 10 bags of Udid were removed from the godown surreptitiously and that the appellant was responsible for the same. We find ourselves unable to accept the appellant's case that the shortage was only on account of other causes and not due to any dishonest act on the part of the appellant. The conviction is not, therefore, open to any challenge at this stage.

6. We find that on granting special leave, the appellant was released on bail on July 12, 1979. The sentence was reduced by the High Court to imprisonment for three months and a fine of Rs. 1000. In view of the short term of imprisonment awarded and the long period during which the appellant was at large, it is not just or proper to put the appellant behind the bars at this distance of time. In the special circumstances of the case and in the interest of justice, we reduce the sentence of imprisonment to the period already undergone while maintaining the sentence of fine. The appeal is

disposed of as above.

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